

### **REMARKS**

Claims 27-56 are now pending in the present application. Consideration of the pending claims is respectfully requested. Claims 1-26 have been cancelled and substitute new claims 27-56 have been added.

The present Response is intended to be fully responsive to all points of rejection previously raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. No new matter has been added by any of the amendments. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

The Examiner previously rejected claims 1, 2, 4, 6, 13, 14, 17, 19, and 21 under 35 U.S.C. §102(b) as being anticipated by Kawaguchi et al. (U.S. Patent No. 4,615,928). In addition, the Examiner also rejected claims 1, 2, 4-7, 9, 10, 13, 14, and 17-25 under 35 U.S.C. §103(b) as being anticipated by Shimada et al. (U.S. Patent Application No. 2001/002291 now U.S. Patent No. 6,637,613), in view of Conrad (U.S. Patent No. 4,946,053) and Zimmer et al. (U.S. Des. 404,311). Applicant has rewritten all claims so as to define the invention more particularly and distinctly in order to overcome the technical rejections and define the invention patentably over the prior art cited by the Examiner.

### **CLAIM REJECTIONS – 35 U.S.C. § 102**

#### **Claims 1, 2, 4, 6, 13, 14, 17, 19, and 21**

In the Office Action dated October 25, 2005, the Examiner rejected claims 1, 2, 4, 6, 13, 14, 17, 19, and 21 under 35 U.S.C. § 102(b) as being anticipated by Kawaguchi et al. (U.S. Patent No. 4,615,928). The Examiner referred to the explanation from the first Office Action mailed April 7, 2005, wherein it was stated that:

**Regarding claims 1, 2, and 4,** see Figs. 17-20 and Col. 15 lines 46-51. There are lateral hinges at the top and the bottom of panel 202n. The panels are specified in col. 15. The weakened panel is 202n since it is thinner. The panel 202n is curved as seen in Fig. 19.

**Regarding claim 6,** there are four panels around the container equally spaced.

**Regarding claim 13**, the process limitations do not require any structure that is not in the reference.

**Regarding claim 14**, there are lateral hinges at the top and the bottom of panel 202n.

**Regarding claim 17**, where the panel 202n is curved as seen in see Fig. 19.

**Regarding claim 19**, the upper and lower have a generally circular cross-section and the middle has a generally oval cross-section as seen in Fig. 19. The term generally is a very broad term and allows for a large amount of variation from circular of oval.

**Regarding claim 21**, there are four panels on the container.

Claims 1, 2, 4, 6, 13, 14, 17, 19, and 21 have been rewritten as new claims 27, 28, 29, 31, 35, 37, 38, 40, and 42, respectively. In addition, new claims 47, 49, and 52 are similarly analogous. Applicant submits that the claims as rewritten define over the Kawaguchi et al '928 container. Kawaguchi et al. '928 does not teach that its open and closed ends have circular lateral cross-sections of substantially equivalent diameters. Moreover, Kawaguchi et al. '928 does not teach that its sidewall has an oval lateral cross-section where the flowing geometries mechanism is formed therein. While the open end of the Kawaguchi et al. '928 container shown in Figs. 17-20 appears to have a substantially circular cross-section, its closed base portion includes several thick wall portions 202m and thin walled portions 202n which deviate from a substantially circular cross-section. In addition, the Kawaguchi et al. '928 container shown in Figs. 17-20 appears to inherently require more than two thin walled portions **212n** to ensure proper stability of its container.

Rejection under §102 for anticipation requires that the single reference teach each and every element or step of the rejected claim. *See, Atlas Powder v. E.I. DuPont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984). A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). It is submitted that Examiner's continued rejection under §102 fails to meet this test.

Kawaguchi et al '928 does not show every element of the claimed invention, and therefore, does not anticipate the claimed invention. Thus, a rejection under 35 U.S.C. § 102 is improper. Applicant respectfully requests Examiner to withdraw this rejection.

**CLAIM REJECTIONS – 35 U.S.C. §103(a)****Claims 1, 2, 4-7, 13, 14, and 17-21**

The Examiner rejected claims 1, 2, 4-7, 13, 14, and 17-21 under 35 U.S.C. §103(a), as being unpatentable over Shimada et al. (U.S. Patent Application No. 2001/002291), in view of Conrad (U.S. Patent No. 4,946,053) and Zimmer et al. (U.S. Des. 404,311). The Examiner has stated that:

Shimada et al ['291] discloses the invention as explained in the previous Office action mailed April 7, 2005. Shimada et al ['291] discloses the invention except for the substantially circular bottom. Conrad ['053] teaches a bottle with a circular bottom. It would have been obvious to modify the bottom of Shimada [et al '291] to be circular as a matter of design choice in choosing a bottom shape, the circular shape has the advantage of not trapping liquids in the corners of a polygonal bottom making dispensing easier and more efficient.

If it is determined that the majority of oval shape of Shimada [et al '291] is not substantially cylindrical insofar as the majority oval shape of the present invention is oval shaped and is different in some way from the oval shape of the present invention. Conrad ['053] teaches an oval shape which is more like a circle as shown in Fig. 5. It would have been obvious to modify the shape of a middle height portion of Shimada [et al '291]'s bottle's lateral cross section to be like that of Conrad ['053] as a matter of design choice of shape, the more circular less elongated shape of the bottle's cross section has the advantage of smoother flow due to less elongation of the bottle in the lateral direction.

Claims 1, 2, 4-7, 13, 14, and 17-21 have been rewritten as new claims 27, 28, 29-32, 35, 37, 38-42, respectively. In addition, new claims 47, 49, 52 and 53 are similarly analogous. Applicant submits that the claims, as rewritten, are non-obviousness despite the teachings of Shimada et al. '291 in view of Conrad '053 and Zimmer '311. Neither Shimada et al. '291, Conrad '053 or Zimmer '311 teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Shimada et al. '291 does not teach or suggest that its container has open and closed ends which have circular lateral cross-sections of substantially equivalent diameters. Indeed, the Shimada et al. '291 reference actually teaches away from the presently claimed invention because it teaches that the upper and lower body sections of its container have “substantially rectangular cross section with quadrant corners.” (see claim 1 and Fig. 2). Moreover, the Shimada et al. '291 reference requires that its container have a narrowing neck 1 and shoulder 5. Needless to say, such narrowing of the open end is not conducive to packaging a single stack of fragile articles such as corn chips or the like.

Similarly, Conrad '053 does not teach or suggest that its container has open and closed ends which have circular lateral cross-sections of substantially equivalent diameters. The Conrad '053 container includes a narrowing neck portion 18 which terminates in an opening which has a smaller diameter than the diameter of the lateral cross-section of the bottom portion 12.

### **Claims 9, 10, and 22-25**

Regarding Claims 9, 10, and 22-25, the Examiner noted that the explanation of the Zimmer '311 combination was explained in the previous Office Action mailed April 7, 2005, wherein the Examiner stated:

Shimada et al ['291] does not teach the claimed annular corrugations. Zimmer et al. (US D 404,311) as seen in Fig. 1, teaches a similar container where the upper and the lower sections have an annular corrugated pattern thereon. It would have been obvious to employ corrugations of Zimmer et al. ['311] in the bottle of Shimada et al ['291] to strengthen the upper and lower sections and make the bottle more visually appealing. At some point along the bottle the pattern is perpendicular to the axis of the bottle.

This rejection is again respectfully traversed. Claims 9, 10, and 22-25 have been rewritten as new claims 32, 33, 43-46, respectively. Claims 32 and 33 depend from Claim 27 and Claims 22-25 depend from Claim 35. The arguments previously raised with regard to the Shimada et al. '291 and Conrad '053 references are incorporated by reference. With regard to the Zimmer '311 design patent, Applicants note that it neither teaches or suggests that the lateral cross-sections of the container at its open and closed ends are either circular nor of substantially equivalent diameters. Moreover, Applicants would again reiterate that design patents are concerned solely with the ornamental appearance of an article of manufacture. (See MPEP 1503.01). While the specific disclosure of structure in a design patent may inherently teach functional features, see *In re Garbo*, 287 F.2d 192 (1961), there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teaching (see MPEP 2143.01). Here, there is none. The Zimmer '311 patent only discloses that its ornamental design is directed at "a bottle." The structure of the bottle is not disclosed. Indeed, it is not inherently clear that the Zimmer '311 container is a lightweight, thin-walled blow molded thermo-plastic container. One of ordinary skill looking at Fig. 6 could easily surmise that the bottle is not of blow molded construction, but rather of a thick glass construction as the bottom is perfectly flat. Moreover,

there is no inherent indication that the corrugations are anything more than an ornamental design. Thus, the prior art cited by Examiner does not, either alone or in combination, teach or disclose every element of Applicant's invention.

It is well established that as a part Examiner's burden to establish a *prima facie* case of obviousness, Examiner is required to show that the referenced teachings "appear to have suggested the claim subject matter." *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143, 147 (C.C.P.A. 1976). As stated by the Federal Circuit, "Obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination." *In re Geiger*, 815 F.2d 683, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987). Neither Shimada et al. '291, Conrad '053, nor Zimmer '311, either alone or in combination, teach or disclose every element of Applicant's invention. Examiner's failure to provide the necessary suggestion or motivation for the combination of Shimada et al. '291, Conrad '053, and Zimmer '311 creates a presumption that the combination selected by Examiner to support the obviousness rejection is based on hindsight. Thus, Applicants would submit that a *prima facie* case of obviousness has not been established and the rejection of the claims should be withdrawn.

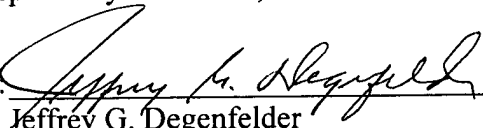
### CONCLUSION

It is respectfully urged that the subject application is patentable and the claims are now in condition for allowance. Applicant requests reconsideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Jeffrey G. Degenfelder at 972.367.2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

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